

## BEFORE THE IDAHO STATE LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE & FAMILY THERAPISTS

In the Matter of the License of:	)	
	)	Case No. COU-2006-2
PRESTON LYNN CARBARY,	)	
License No. LCPC-3214,	)	<b>ORDER OF EMERGENCY</b>
	)	<b>SUSPENSION OF LICENSE</b>
Respondent.	)	
	)	

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This matter having come before the Idaho State Licensing Board of Professional Counselors and Marriage & Family Therapists (hereinafter the "Board") as an emergency proceeding pursuant to the provisions of the Idaho Administrative Procedures Act, Idaho Code § 67-5247, and the provisions of the Idaho Counselors and Therapists Act, title 54, chapter 34, Idaho Code, the Board finds and orders as follows:

### FINDINGS OF FACT

After reviewing the file in this matter, it is hereby found that:

1. Preston Lynn Carbary (hereinafter "Respondent") holds a license to practice professional counseling in the State of Idaho under License No. LCPC-3214. Respondent is also licensed to practice as a mental health counselor in the State of Washington under License No. LH00006880.

2. On or about February 22, 2006, information was received by the Board that Respondent's Washington license was summarily suspended on October 25, 2005, based upon allegations that Respondent had unwanted sexual intercourse with two patients and threatened to have the patients' children taken away if the patients reported Respondent to the Washington Department of Health. True and correct copies of the Statement of Charges and the Ex Parte Order of Summary Action in In the Matter of the License of Carbary, Washington Mental Health Counselor Program Docket No. 05-10-B-10611.H, are attached hereto as Exhibits A and B, respectively.

3. Due to the nature of the allegations, the threat to the public health, safety or welfare is ongoing.

### **CONCLUSIONS OF LAW**

Based upon the above findings of fact, the Board hereby reaches the following conclusions of law:

1. Idaho Code § 54-3400 provides that the practice of counseling is a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the public interest.

2. Pursuant to Idaho Code § 54-3404, the Board has the responsibility and authority to enforce the provisions of the Idaho Counselors and Therapists Act.

3. Idaho Code § 54-3404 provides that the Board shall be responsible for the control and regulation of the practice of professional counselors and marriage and family therapists in Idaho including the suspension, revocation, restriction, or other discipline of licenses to practice counseling.

4. Idaho Code § 54-3405C(5) provides that “[a] license will not be allowed an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field.”

5. Respondent’s State of Washington mental health counselor license was suspended on October 25, 2005.

6. Pursuant to Idaho Code § 67-5247, the Board may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action. The Board is authorized to take such actions as are necessary to prevent or avoid the immediate danger that justifies the use of emergency contested cases.

7. The findings of fact set forth above, inclusive of Exhibits A and B attached hereto, constitute grounds for the Board to act in an emergency proceeding to protect the public health, safety or welfare. As referenced in Paragraph 1.4 of the Ex Parte Order of

Summary Action at Exhibit B hereto, Respondent's alleged conduct including "abusing his position of trust, violating patient/client boundaries, and abusing patients under his care poses an immediate and unacceptable risk" to the public.

8. The findings of fact set forth above, inclusive of Exhibits A and B attached hereto, constitute grounds for the immediate suspension of Respondent's license to practice professional counseling in the State of Idaho. This suspension is necessary to prevent or avoid an immediate danger to the public health, safety or welfare, specifically the danger of exploitation of patients under Respondent's care in violation of Idaho law.

### **ORDER**

NOW, THEREFORE, this matter having properly come before the Idaho State Licensing Board of Professional Counselors and Marriage & Family Therapists, and based upon the above findings of fact and conclusions of law, the license of Preston Lynn Carbary to practice professional counseling in the State of Idaho is hereby immediately SUSPENDED until the completion of any proceeding by the Board that would be required for the suspension or revocation of his license if this matter did not involve an immediate danger. The Board shall proceed as quickly as feasible to complete such proceedings.

DATED this 1<sup>st</sup> day of March, 2006.

IDAHO STATE LICENSING BOARD OF  
PROFESSIONAL COUNSELORS AND  
MARRIAGE & FAMILY THERAPISTS

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By Roberta Crockett  
Roberta Crockett, Chair

## **NOTICE OF DUE PROCESS RIGHTS**

This is a final order of the Board. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The Board will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Idaho Code § 67-5246(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- a. A hearing was held,
- b. The final agency action was taken,
- c. The party seeking review of the order, resides, or
- d. The real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1<sup>st</sup> day of March, 2006, I caused to be served a true and correct copy of the foregoing by the following method to:

Preston Lynn Carbary  
P.O. Box 130  
Loon Lake, WA 99148

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Emily A. Mac Master  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ Statehouse Mail

Jean R. Uranga  
URANGA & URANGA  
P.O. Box 1678  
Boise, ID 83701

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail



Rayola Jacobsen, Chief  
Bureau of Occupational Licenses

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
SECRETARY OF HEALTH  
MENTAL HEALTH COUNSELOR PROGRAM

In the Matter of the License to Practice as a  
Mental Health Counselor of

**PRESTON L. CARBARY,**  
License No. LH00006880

Respondent

Docket No. 05-10-B-1061LH

**STATEMENT OF CHARGES**

The Executive Director of the Mental Health Counselor Program, (Program) on designation by the Secretary of Health, makes the allegations below, which are supported by the evidence contained in program file number 2005-03-0002. The patients referred to in this Statement of Charges are identified in the attached Confidential Schedule.

**Section 1: ALLEGED FACTS**

1.1 Preston L. Carbary, Respondent, was issued a license to practice as a mental health counselor by the state of Washington in July 2001. Respondent's license is currently active.

1.2 From on or about June through approximately August 2004, Respondent was providing mental health counseling services to Patient A and her family. In the course of providing counseling, Respondent abused and engaged in sexual contact with Patient A. Specifically, on at least four (4) different occasions, Respondent had unwanted sexual intercourse with Patient A and threatened to have her children taken away if she reported him to DSHS.

1.3 From on or about October 2004 through December 2004, Respondent was providing mental health counseling services to Patient B and her family. In the

course of providing counseling, Respondent abused and engaged in sexual contact with Patient B. Specifically, on at least three (3) different occasions in November 2004, Respondent had unwanted sexual intercourse with Patient B and threatened to have her children taken away if she reported him to DSHS.

## Section 2: ALLEGED VIOLATIONS

2.1 Based on the facts in Section 1, Respondent has committed unprofessional conduct in violation of RCW 18.130.180(1) and (24), which provides in part:

**RCW 18.130.180 Unprofessional conduct.** The following conduct, acts, or conditions constitute unprofessional conduct for any license holder or applicant under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

...

(24) Abuse of a client or patient or sexual contact with a client or patient;

...

2.2 The above violation provides grounds for imposing sanctions under

RCW 18.130.160.

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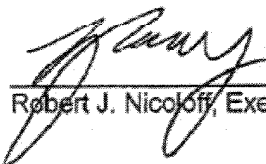
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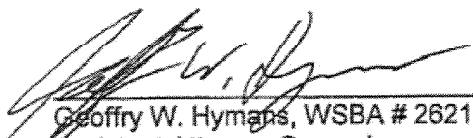
### Section 3: NOTICE TO RESPONDENT

The charges in this document affect the public health, safety and welfare. The Executive Director of the Program directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these charges, Respondent shall be subject to discipline pursuant to RCW 18.130.180 and the imposition of sanctions under RCW 18.130.160.

DATED October 24<sup>th</sup>, 2005.

STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
SECRETARY OF HEALTH  
MENTAL HEALTH COUNSELOR PROGRAM

  
Robert J. Nicoloff, Executive Director

  
Geoffrey W. Hymans, WSBA # 26210  
Assistant Attorney General

FOR INTERNAL USE ONLY:

PROGRAM NO. 2005-03-0002LH

STATEMENT OF CHARGES  
Docket No. 05-10-B-1061LH

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Exhibit A  
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**CONFIDENTIAL SCHEDULE**

This information is confidential and is NOT to be released without the consent of the individual or individuals named herein. RCW 42.17.310(1)(d)

Patient A



Patient B

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
SECRETARY OF HEALTH  
MENTAL HEALTH COUNSELOR PROGRAM**

In the Matter of the License to Practice ) as a Mental Health Counselor of )	Docket No. 05-10-B-1061LH
PRESTON L. CARBARY, )	EX PARTE ORDER OF
License No. LH00006880, )	SUMMARY ACTION
Respondent. )	
_____ )	

This matter came before Senior Health Law Judge Laura Farris, Presiding Officer on designation by the Secretary of Health, on October 24, 2005, on an Ex Parte Motion for Order of Summary Suspension brought by the Department of Health, Mental Health Counselor Program. The Presiding Officer, designee of the Secretary of Health, reviewed the motion, and the documents submitted in support of the motion, enters the following:

**Section 1: FINDINGS OF FACT**

1.1 Preston L. Carbary, Respondent, was issued a license to practice as a mental health counselor by the state of Washington in July 2001. The Respondent's license is currently active.

1.2 The Program issued a Statement of Charges alleging the Respondent violated RCW 18.130.180(1) and (24). The Statement of Charges was accompanied by all other documents required by WAC 246-10-201.

1.3 The allegations contained in the Statement of Charges establish a prima facie case that an immediate threat of danger to the public health, safety, or welfare exists. The allegations are as follows:

1.3.1 From on or about June through approximately August 2004, the Respondent was providing mental health counseling services to Patient A and her family. In the course of providing counseling, the Respondent abused and engaged in sexual contact with Patient A. Specifically, on at least four (4) different occasions, the Respondent had unwanted sexual intercourse with Patient A and threatened to have her children taken away if she reported him to DSHS.

1.3.2 From on or about October 2004 through December 2004, the Respondent was providing mental health counseling services to Patient B and her family. In the course of providing counseling, the Respondent abused and engaged in sexual contact with Patient B. Specifically, on at least three (3) different occasions in November 2004, the Respondent had unwanted sexual intercourse with Patient B and threatened to have her children taken away if she reported him to DSHS.

1.4 The alleged conduct, as set forth in the allegations above and as supported by the documentation attached to the Ex Parte Motion for Order of Summary Action, is directly related to the Respondent's ability to practice safely as a licensed mental health counselor in the state of Washington. The Respondent's pattern of abusing his position of trust, violating patient/client boundaries, and abusing patients under his care poses an immediate and unacceptable risk to the health care public in general. To the extent that his unencumbered health care credential would facilitate in any way his continued exploitation of vulnerable patients, this is reason enough to suspend that credential completely pending further proceedings in this matter.

Based on the evidence submitted with the Ex Parte Motion for Order of Summary Action, a summary suspension of the Respondent's credential to practice as a licensed

mental health counselor is the least restrictive action necessary to prevent or avoid immediate danger to the public health safety or welfare.

## Section 2: CONCLUSIONS OF LAW

2.1 The Secretary of Health has jurisdiction over the Respondent's registration to practice as a nursing assistant in the state of Washington.

2.2 The Secretary of Health has authority to take emergency adjudicative action, ordering summary suspension of a license, to address an immediate danger to the public health, safety, or welfare, to the extent necessary to address the immediate danger. See RCW 34.05.422(4), RCW 34.05.479, RCW 18.130.050(7), and WAC 246-10-301.

2.3 The above Findings of Fact establish:

(a) The existence of an immediate danger to the public health, safety, or welfare;

(b) That the requested summary action adequately addresses the danger to the public health, safety, or welfare; and

(c) The requested summary action is necessary to address the danger to the public health, safety, or welfare.

2.4 The requested summary action is the least restrictive agency action justified by the danger posed by the Respondent's continued practice as a licensed mental health counselor.

2.5 The above Findings of Fact establish conduct which warrants summary action to protect the public health, safety, or welfare.

**Section 3: ORDER**

Based on the above Findings of Fact and Conclusions of Law, the Adjudicative Service Unit enters the following order:

3.1 IT IS HEREBY ORDERED that the Respondent's license to practice as a mental health counselor in the state of Washington be SUMMARILY SUSPENDED pending further disciplinary proceedings by the Secretary of Health. The suspension is effective immediately upon service of this Order.

3.2 IT IS FURTHER ORDERED that the Respondent immediately surrender his license to practice as a mental health counselor and any and all copies to the Program or its representative.

Dated this 25<sup>th</sup> day of October, 2005.



LAURA PARRIS, Senior Health Law Judge  
Presiding Officer

INTERNAL TRACKING NUMBERS:

Program No. 2005-03-0002LH